

**OFFICE OF CONTRACTING AND PROCUREMENT****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 3 of the Excellence in Local Business Contract Grading Act of 2008, effective March 26, 2008 (D.C. Law 17-137; D.C. Official Code § 2-325.05 (2009 Supp.)) (Act) and Mayor's Order 2009-8 (dated January 29, 2009), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking to add a new section to Chapter 22 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). This rulemaking adds a new section 2219 to Chapter 22 concerning procedures for declaring a contractor ineligible to apply for or work on any District contracts because it has received a final evaluation grade of F on a District contract.

Without these emergency rules, the Office of Contracting and Procurement will not be able to declare ineligible those contractors who have already received a final evaluation grade of F on a District contract. Adoption of these emergency rules to amend Chapter 22 is thus necessary for the immediate preservation of the public safety or welfare, in accordance with District law as codified at D. C. Official Code § 2-505(c) (2001). These emergency rules will remain in effect for up to one hundred twenty (120) days from the date of adoption or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Chief Procurement Officer gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Chief Procurement Officer will submit the rules to the Council of the District of Columbia for a forty-five (45) day period of review pursuant to section 3 of the Act, and will not take final rulemaking action until completion of the 45-day review period or Council approval of the rules by resolution before the end of the review period.

Emergency rules on this subject matter were previously adopted on October 19, 2009, and those emergency rules, along with identical proposed rules, were published in the *D.C. Register* on December 11, 2009, at 56 DCR 9343. The previously adopted emergency rules are hereby rescinded and the previously published proposed rules are hereby superseded by the proposed rules contained in this notice.

*Chapter 22 of Title 27 DCMR is amended by adding a new section 2219 to read as follows:*

**2219 INELIGIBILITY PROCEEDINGS UNDER THE EXCELLENCE IN LOCAL BUSINESS CONTRACT GRADING ACT OF 2008**

- 2219.1 This section shall apply to contractor ineligibility proceedings in accordance with the Excellence in Local Business Contract Grading Act of 2008, effective March 26, 2008 (D.C. Law 17-137; D.C. Official Code § 2-325.04 *et seq.*) (2009 Supp.) (Act).
- 2219.2 Each contractor's performance shall be evaluated and graded after expiration or termination of each contract.

- 2219.3 A contractor may receive one of the following performance grades in a final evaluation letter:
- (a) A (Excellent), which shall have a numeric value of four-point-zero (4.0);
  - (b) C (Satisfactory), which shall have a numeric value of two-point-zero (2.0); or
  - (c) F (Unsatisfactory), which shall have a numeric value of zero (0).
- 2219.4 If a contractor receives a final grade of F on a contract, the Director shall determine a cumulative grade by averaging all of the grades that the contractor has received on the performance of its contracts for the preceding twelve (12) month period. If the average grade for the preceding twelve (12) month period equals one-point-zero (1.0) or below, that cumulative grade shall be considered a grade of F, and the Director shall initiate ineligibility proceedings against the contractor.
- 2219.5 The Director shall initiate ineligibility proceedings against a contractor by notifying the contractor by certified mail, return receipt requested, of the following:
- (a) The contractor has received a grade of F as its cumulative grade;
  - (b) The contractor may, within fifteen (15) days after receipt of the notice, file a written appeal of the cumulative grade to the Director;
  - (c) If the contractor files a written appeal, the Director will review the cumulative grade and make a final written decision on the contractor's cumulative grade;
  - (d) In making its appeal, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the proposed cumulative grade of F, including any additional specific information that raises a genuine issue of fact; and
  - (e) If the contractor fails to file a written appeal within fifteen (15) days after receipt of the notice, the contractor will be subject to the same consequences of ineligibility as described in § 2212 for a one (1)-year period, which shall commence on the sixteenth (16<sup>th</sup>) day after the date of the notice.
- 2219.6 The Director shall include a copy of the final evaluation letter and the contractor evaluation(s) for which the contractor received a grade of F with the notice provided pursuant to § 2219.5.
- 2219.7 If the contractor timely files an appeal with the Director, the Director shall issue his final decision on the matter within fifteen (15) days after receipt of the contractor's appeal. The Director shall base his decision on the facts as found together with any information and argument submitted by the contractor.

- 2219.8 If the Director in his final decision decides not to change the contractor's cumulative grade of F, the Director shall notify the contractor by certified mail, return receipt requested. The final written decision shall include:
- (a) A copy of the final written decision;
  - (b) Notice to the contractor of its right to appeal the final decision to the Contract Appeals Board (CAB) within thirty (30) days after receipt of the final decision;
  - (c) A statement that the contractor will be subject to the same consequences of ineligibility as described in § 2212 of this chapter for a one (1)-year period; and
  - (d) The ineligibility period shall commence on the thirty-first (31<sup>st</sup>) day after the date of the final written decision if the contractor chooses not to appeal the final decision, or the day after the CAB dismisses or denies the contractor's appeal.
- 2219.9 If the Director in his final decision decides to change the cumulative grade of F, the Director shall notify the contractor of his decision by certified mail, return receipt requested.
- 2219.10 A contractor who has received a cumulative grade of F shall remain eligible to apply for or work on any District contract until the CAB appeal process has been concluded.
- 2219.11 The Director shall ensure that ineligible contractors are included on the consolidated list of debarred, suspended, and ineligible contractors maintained pursuant to § 2211.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4<sup>th</sup> Street, 700 South, Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

**UNIVERSITY OF THE DISTRICT OF COLUMBIA****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (“Act”) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); (c)(4)) hereby gives notice of its intent to amend Section 120.5 of Title 8, D.C.M.R., in not less than thirty (30) days from the date of publication of this notice in the D.C. Register; and, on an emergency basis, to amend Section 120.5 of Title 8, D.C.M.R. The purpose of the emergency and proposed rule is to ensure the efficient and fair conduct of elections for the alumni members of the Board of Trustees of the University of the District of Columbia.

The Board of Trustees hereby declares an emergency with respect to the delays in conducting the postal balloting portion of the alumni Trustee election, which resulted from the unprecedented February snowfall in the Washington, D.C., metropolitan area.

The Board of Trustees of the University of the District of Columbia hereby proposes to amend 8 D.C.M.R. § 120.5, and on an emergency basis does amend § 120.5, as follows:

Strike the word “vacancy” and the following period, and insert in its place the phrase, “vacancy; provided, however, that the election conducted for alumni Trustee terms beginning on May 15, 2010, shall be conducted not less than forty-five (45) days prior to May 15, 2010.”; to read as follows:

**120.5** Not less than ninety (90) days, nor more than one hundred eighty (180) days, before the expiration of the term of office of the incumbent alumni member of the Board of Trustees, the President, or the President's designee, shall conduct an election to fill the impending vacancy; provided, however, that the election conducted for alumni Trustee terms beginning on May 15, 2010, shall be conducted not less than forty-five (45) days prior to May 15, 2010.

---

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with the Office of General Counsel, Building 39- Room 301Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W. Washington, D.C. 20008. Comments may also be submitted by email to dbrozovic@udc.edu. Individuals wishing to comment by email must include the phrase “Comment to Proposed Rulemaking” in their subject line. Copies of the proposed rules may be obtained from the Office of the General Counsel at the address set forth above.